

AMENDED IN ASSEMBLY AUGUST 16, 2004

AMENDED IN ASSEMBLY JULY 28, 2004

AMENDED IN ASSEMBLY JUNE 29, 2004

AMENDED IN ASSEMBLY JUNE 8, 2004

AMENDED IN SENATE APRIL 29, 2004

AMENDED IN SENATE MARCH 25, 2004

SENATE BILL

No. 1858

Introduced by Senator Dunn

~~(Principal coauthor: Assembly Member Spitzer)~~

*(Principal coauthors: Assembly Members Negrete McLeod and
Spitzer)*

February 20, 2004

An act to amend Section 53071.5 of the Government Code, to amend Section 417.4 of, to add Sections 12550, 12553, 12554, 12555, and 12556 to, to repeal Section 417.2 of, and to amend the heading of Article 1 (commencing with Section 12550) of Chapter 6 of Title 2 of Part 4 of, the Penal Code, relating to imitation firearms, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1858, as amended, Dunn. Imitation firearms.

Existing law defines "imitation firearm" which definition excludes BB guns.

This bill would include a BB device within the definition of "imitation firearm" for certain purposes.

Existing law generally regulates commerce in imitation firearms, as specified. This bill would repeal, recast and add those provisions, and expand certain exceptions to the scope of those provisions regulating commerce of imitation firearms.

Existing law, subject to exceptions, makes it an offense to draw or exhibit an imitation firearm in a threatening manner, as specified.

This bill would expand the definition of imitation firearm for purposes of that crime.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

This bill would provide that, subject to exceptions, any person who alters a device that is not an imitation firearm with the result that the device appears more like a firearm, as specified, is punishable as a misdemeanor.

By creating a new crime, this bill would impose a state-mandated local program.

This bill would provide that any manufacturer, importer, or distributor of imitation firearms that fails to comply with any applicable federal law or regulation governing the marking of a toy, look-alike or imitation firearm as defined by federal law or regulation is punishable as a misdemeanor.

By creating a new crime, this bill would impose a state-mandated local program.

This bill would require an advisory label for imitation firearms, as specified. The bill would provide that failure to provide the advisory would make a manufacturer, importer, or distributor liable for a civil fine, as specified.

This bill would, subject to exceptions, make it an offense to openly display or expose any imitation firearm in a public place.

By creating a new crime, this bill would impose a state-mandated local program.

~~The bill would declare that it is to take effect immediately as an urgency statute.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 53071.5 of the Government Code is
2 amended to read:

3 53071.5. By the enforcement of this section, the Legislature
4 occupies the whole field of regulation of the manufacture, sale, or
5 possession of imitation firearms, as defined in Section 12550 of
6 the Penal Code, and that section shall preempt and be exclusive of
7 all regulations relating to the manufacture, sale, or possession of
8 imitation firearms, including regulations governing the
9 manufacture, sale, or possession of BB devices and air rifles
10 described in subdivision (g) of Section 12001 of the Penal Code.

11 SEC. 2. Section 417.2 of the Penal Code is repealed.

12 SEC. 3. Section 417.4 of the Penal Code is amended to read:

13 417.4. Every person who, except in self-defense, draws or
14 exhibits an imitation firearm, as defined in Section 12550, in a
15 threatening manner against another in such a way as to cause a
16 reasonable person apprehension or fear of bodily harm is guilty of
17 a misdemeanor punishable by imprisonment in a county jail for a
18 term of not less than 30 days.

19 SEC. 4. The heading of Article 1 (commencing with Section
20 12550) of Chapter 6 of Title 2 of Part 4 of the Penal Code is
21 amended to read:

22

23 Article 1. BB Devices and Imitation Firearms

24

25 SEC. 5. Section 12550 is added to the Penal Code, to read:

26 12550. As used in this article, the following definitions apply:

27 (a) “BB device” is defined in subdivision (g) of Section 12001.

28 (b) “Firearm” is defined in subdivision (b) of Section 12001.

29 (c) “Imitation firearm” means any BB device, toy gun, replica
30 of a firearm, or other device that is so substantially similar in
31 coloration and overall appearance to an existing firearm as to lead
32 a reasonable person to perceive that the device is a firearm.

33 SEC. 6. Section 12553 is added to the Penal Code, to read:

1 12553. Any person who changes, alters, removes, or
2 obliterates any coloration or markings that are required for by any
3 applicable state or federal law or regulation, for any imitation
4 firearm, or device described in subdivision (c) of Section 12555,
5 in any way that makes the imitation firearm or device look more
6 like a firearm is guilty of a misdemeanor. This subdivision shall
7 not apply to manufacturer, importer, or distributor of imitation
8 firearms or to the lawful use in theatrical productions, including
9 motion pictures, television, and stage productions.

10 (b) Any manufacturer, importer, or distributor of imitation
11 firearms that fails to comply with any applicable federal law or
12 regulation governing the marking of a toy, look-alike or imitation
13 firearm as defined by federal law or regulation is guilty of a
14 misdemeanor.

15 SEC. 7. Section 12554 is added to the Penal Code, to read:

16 12554. (a) Any imitation firearm manufactured after July 1,
17 2005, shall, at the time of offer for sale in this state, be
18 accompanied by a conspicuous advisory in writing as part of the
19 packaging, but not necessarily affixed to the imitation firearm, to
20 the effect that the product may be mistaken for a firearm by law
21 enforcement officers or others, that altering the coloration or
22 markings required by state or federal law or regulations so as to
23 make the product look more like a firearm is dangerous, and may
24 be a crime, and that brandishing or displaying the product in public
25 may cause confusion and may be a crime.

26 (b) Any manufacturer, importer, or distributor that fails to
27 comply with this advisory for any imitation firearm manufactured
28 after July 1, 2005, shall be liable for a civil fine for each action
29 brought by a city attorney or district attorney of not more than one
30 thousand dollars (\$1,000) for the first action, five thousand dollars
31 (\$5,000) for the second action, and ten thousand dollars (\$10,000)
32 for the third action and each subsequent action.

33 SEC. 8. Section 12555 is added to the Penal Code, to read:

34 12555. Any person who, for commercial purposes, purchases,
35 sells, manufactures, ships, transports, distributes, or receives, by
36 mail order or in any other manner, an imitation firearm except as
37 authorized by this section shall be liable for a civil fine in an action
38 brought by the city attorney or the district attorney of not more than
39 ten thousand dollars (\$10,000) for each violation.

(b) The manufacture, purchase, sale, shipping, transport, distribution, or receipt, by mail or in any other manner, of imitation firearms is authorized if the device is manufactured, purchased, sold, shipped, transported, distributed, or received for any of the following purposes:

(1) Solely for export in interstate or foreign commerce.

(2) Solely for lawful use in theatrical productions, including motion picture, television, and stage productions.

(3) For use in a certified or regulated sporting event or competition.

(4) For use in military or civil defense activities, or ceremonial activities.

(5) For public displays authorized by public or private schools.

(c) As used in this section, “imitation firearm” does not include any of the following:

(1) A nonfiring collector’s replica that is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case.

(2) A BB device, as defined in subdivision (g) of Section 12001.

(3) A device where the entire exterior surface of the device is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern, as provided by federal regulations governing imitation firearms, or where the entire device is constructed of transparent or translucent materials which permits unmistakable observation of the device’s complete contents, as provided by federal regulations governing imitation firearms.

SEC. 9. Section 12556 is added to the Penal Code, to read:

12556. (a) No person may openly display or expose any imitation firearm, as defined in Section 12550, in a public place.

(b) Violation of this section, except as provided in subdivision (c), is an infraction punishable by a fine of one hundred dollars (\$100) for the first offense, and three hundred dollars (\$300) for a second offense.

(c) A third or subsequent violation of this section is punishable as a misdemeanor.

(d) Subdivision (a) shall not apply to the following, when the imitation firearm is:

- 1 (1) Packaged or concealed so that it is not subject to public
2 viewing.
- 3 (2) Displayed or exposed in the course of commerce, including
4 commercial film or video productions, or for service, repair, or
5 restoration of the imitation firearm.
- 6 (3) Used in a theatrical production, a motion picture, video,
7 television, or stage production.
- 8 (4) Used in conjunction with a certified or regulated sporting
9 event or competition.
- 10 (5) Used in conjunction with lawful hunting, or lawful pest
11 control activities.
- 12 (6) Used or possessed at certified or regulated public or private
13 shooting ranges.
- 14 (7) Used at fairs, exhibitions, expositions, or ~~activities~~
15 ~~permitted by a government agency;~~ *other similar activities for*
16 *which a permit has been obtained from a local or state*
17 *government.*
- 18 (8) Used in military, civil defense, or civic activities, including
19 flag ceremonies, color guards, parades, award presentations,
20 historical reenactments, and memorials.
- 21 (9) Used for public displays authorized by public or private
22 schools or displays that are part of a museum collection.
- 23 (10) Used in parades, ceremonies, or other similar activities for
24 which a permit has been obtained from a local or state government.
- 25 (11) Displayed on a wall plaque or in a presentation case.
- 26 (12) Used in areas where the discharge of a firearm is lawful.
- 27 (13) A device where the entire exterior surface of the device is
28 white, bright red, bright orange, bright yellow, bright green, bright
29 blue, bright pink, or bright purple, either singly or as the
30 predominant color in combination with other colors in any pattern,
31 or where the entire device is constructed of transparent or
32 translucent materials which permits unmistakable observation of
33 the device's complete contents. Merely having an orange tip as
34 provided in federal law and regulations does not satisfy this
35 requirement. The entire surface must be colored or transparent or
36 translucent.
- 37 (e) For purposes of this section, the term "public place" means
38 an area open to the public and includes streets, sidewalks, bridges,
39 alleys, plazas, parks, driveways, front yards, parking lots,
40 automobiles, whether moving or not, and buildings open to the



1 general public, including those that serve food or drink, or provide
2 entertainment, and the doorways and entrances to buildings or
3 dwellings.

4 (f) Nothing in this section shall be construed to preclude
5 prosecution for a violation of Section 171b, 171.5, or 626.10.

6 SEC. 10. No reimbursement is required by this act pursuant
7 to Section 6 of Article XIII B of the California Constitution
8 because the only costs that may be incurred by a local agency or
9 school district will be incurred because this act creates a new crime
10 or infraction, eliminates a crime or infraction, or changes the
11 penalty for a crime or infraction, within the meaning of Section
12 17556 of the Government Code, or changes the definition of a
13 crime within the meaning of Section 6 of Article XIII B of the
14 California Constitution.

15 SEC. 11. This act is an urgency statute necessary for the
16 immediate preservation of the public peace, health, or safety
17 within the meaning of Article IV of the Constitution and shall go
18 into immediate effect. The facts constituting the necessity are:

19 In order to effectively regulate imitation firearms for purposes
20 of promoting public safety, it is necessary that this act take effect
21 immediately.

